

MEMORANDUM

To: Vice Chair Murray and Members of the Rent Review Advisory Committee

From: Michael Roush, Interim City Attorney

Date: January 7, 2019

Subject: Information on Agenda Materials Provided to the Committee and the Public

Background

Landlords seeking a rent increase of more than 5% must submit information to the Rent Stabilization Program so that the Rent Review Advisory Committee (RRAC) has the opportunity to hear and make a decision concerning the rent increase. The information that the landlord submits to the Rent Stabilization Program in part sets forth the name, address and contact information of the tenant(s) to whom the rent increase applies. See form RP-04, copy attached. Similarly, for rent increases that are 5% or less, a tenant may submit information to the Rent Stabilization Program requesting the RRAC to hear and make a decision concerning the rent increase. The information that the tenant submits to the Rent Stabilization Program also sets forth the name, address and contact information of the tenant(s). See form RP-01, copy attached.

Because the RRAC is a “policy body” as defined in the City’s Sunshine Ordinance (Sections 2-90, et seq., Alameda Municipal Code [AMC]), its meetings are open to the public and an agenda for its meetings must be posted seven days before the meeting. The agenda must contain a meaningful description of each item of business to be transacted or discussed at the meeting. Section 2-91.5 a, AMC. In addition to the agenda materials being provided to the RRAC, all agendas must be available to the public either in hard copy or on the City’s website. Sections 2-91.5 d, 2-91.9 a, AMC.

Significantly, for purposes of this memo, all documents material to an agenda item must accompany the agenda. Section 2-91.5 e, AMC. Documents material to an agenda item include the forms submitted by the landlord or tenant as described above, including supportive documentation that parties submit along with the form. However, disclosure of this information need not include any material exempt from public disclosure under the Sunshine Ordinance. Section 2-91.9 a, AMC. The Sunshine Ordinance incorporates the exemptions from disclosure under the State’s Public Records Act (Government Code, section 6254, et seq.). Those exemptions include a “public interest” exemption that permits a local agency to withhold information if the agency can demonstrate that on the facts of a particular case the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure. Government Code, section 6255.

Justifying nondisclosure under the public interest exemption demands clear support on the side of confidentiality. For example, courts have upheld the nondisclosure of the names, addresses and contact information of airport noise complainants because of the chilling effect such disclosure could have on persons who were affected by airport related noise.

From time to time, staff hears that tenants have been reluctant to attend the RRAC hearing to contest their rent increases because of the public nature of the RRAC process. For example, tenants have stated they chose to agree to higher than 5% increases to avoid having their name, address and contact

information published in the RRAC agenda. Other tenants have expressed fear that appearing at the RRAC hearing will subject the tenant to retaliation from the landlord or make it difficult for the tenant to rent in the future, as potential landlords would be able to search a tenant's history of participation in the RRAC process. There does not seem to be any empirical evidence to support these concerns, nonetheless the perception remains.

Moreover, Management Partners, a third-party consultant group, presented this same privacy concern in its July 2018 report, which reviewed aspects of the RRAC process. The report was based on program data, best practices of other rent stabilization jurisdictions, and interviews with local stakeholders and program staff. Specifically, the report recommended that the City Attorney's Office advise as to opportunities to increase confidentiality in the RRAC process.

The discussion below provides for new administrative procedures to increase confidentiality in the RRAC process.

Discussion

In order to address these privacy concerns, information that is submitted to the Rent Stabilization Program that sets forth the name, address and contact information of a tenant will be redacted so that any publicly available information about the tenant will not be disclosed. A tenant will simply be identified as a "Participant" on the redacted form and be referred to as such at the RRAC meetings and in the meeting minutes. If the rental unit is a single family home, the name of the street will be identified but not the house number; if the rental unit is multi-family building, the street address will be identified but not the unit number. Contact information for the tenant (phone number, email address) will be redacted.

This will not eliminate a tenant's having to appear at a RRAC meeting that is open to the public. Tenants may choose to articulate at the RRAC meeting some difficult personal information, such as job status, a family situation, or why the rent increase imposes a financial hardship on the tenant. However, the tenant is not required to disclose or discuss any information and has the choice of expressing only the information they are comfortable sharing in a public setting.

These additional redactions should alleviate concerns that a web search of the tenant's name will reveal that the tenant has "contested" a rent increase that could bear on the tenant's opportunity to rent elsewhere.

In addition to providing this memo to the Committee, Rent Stabilization Program staff will place it on the RRAC agenda for discussion purposes in the context of modifying the RRAC process in light of this Office's legal advice in the near term. Eventually, however, depending on RRAC discussion, this Office may recommend to the City Council certain amendments to Ordinance No. 3148 to formally address these privacy concerns by ordinance. In the interim, if any Committee members have questions or concerns, please let us know.

c Gregory Kats, Rent Stabilization Program Director
John Le, Assistant City Attorney